

Appl. No.: 09/644,026
Amdt dated July 25, 2003
Reply to Office Action of Feb. 25, 2003

Patent
14393-0015

REMARKS/ARGUMENTS

Claims 46-64 are currently pending in the present application. In the Office Action mailed February 25, 2003, claims 58-59 were rejected under 35 U.S.C. §112 and claims 51, 58, 60, and 61 were rejected under 35 U.S.C. §102(b). In addition, claims 46-57, 59, and 62-64 were rejected under 35 U.S.C. §103(a).

In response, each one of the cited references has been reviewed and the rejections made to the claims by the Examiner have been considered. 41, 42, 53, and 63 of the present application have been amended and claims 66-71 have been added. For the reasons set forth below, it is submitted that all the claims are in condition for allowance and allowance of the application is respectfully requested.

Rejections under 35 USC §103

In the Office Action dated February 25, 2003, claims 41, 43-51, 55-62, 64, and 65 were rejected under 35 USC §103(a) as being unpatentable over United States pat. No. 5,401,269, issued to Buttner-Janz et al. (hereinafter Buttner-Janz) in view of United States Pat. No. 5,071,437, issued to Steffee (Hereinafter Steffee). For the reasons set forth below, the Applicants respectfully traverse the rejections and respectfully submit that the pending claims define patentable subject matter over the cited prior art.

To establish a prima facie case of obviousness, the Examiner must meet three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (see MPEP §2143.03).

Claim 41 of the present application is direct to an implantable device and includes first and second anchor plates sized to be positioned within an intradiscal

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section between adjacent vertebra, the first and second anchor plates not being coupled to each other and configured to be individually coupled one of the adjacent vertebrae, each anchor plate comprising a plate member and a plurality of anchoring elements having outer walls that extend substantially perpendicular from the plate member which do not include threading for screwing the anchoring elements into the vertebrae, a distal portion of the anchoring elements comprising a lumen extending longitudinally within the anchoring elements from a distal end of the anchoring elements, the anchoring elements being introducable into an end plate of one of the adjacent vertebrae to secure the anchor plate to the vertebrae, and an intradiscal component positioned between and in contact with the first and second anchor plates and attached thereto, thereby affixing the intradiscal component to the first and second anchor plates secured to the adjacent vertebrae.

Claim 53 of the present application is directed to a kit for forming an implantable device for insertion into an intradiscal section between adjacent vertebrae and includes first and second anchoring plates sized to be positioned within an intradiscal section between adjacent vertebrae, the first and second anchor plates not being coupled to each other, each anchor plate comprising a plate member and a plurality of anchoring elements having outer walls that extend substantially perpendicular from the plate member which do not include threading for screwing the anchoring elements into the vertebrae, a distal portion of the anchoring elements comprising a lumen extending longitudinally within the anchoring elements from a distal end of the anchoring elements, the anchoring elements being introducable into an end plate of the of one of the adjacent vertebrae to secure the anchor plate to the vertebrae; each anchor plate configured to be individually attached to one of the adjacent vertebrae and having an intervertebral component coupled thereto, thereby affixing the intervertebral component to the first and second anchor plates secured to the vertebrae.

The Buttner-Janz reference is directed to an intervertebral disc endoprosthesis and includes two prosthesis plates which are inserted between two vertebrae, and a

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prosthesis core which cooperates with at least one prosthesis plate at an articulated surface permitting a rotational movement around a vertical axis.

The Steffee reference is directed to an artificial disc and includes an upper flat rigid plate, and lower flat rigid plate and an elastomer core interposed between the plates and adhered to the plates.

The Buttner-Janz and Steffee reference fail to teach or suggest a first and second anchor plate each being individually couplable to adjacent vertebrae, the first and second anchor plates configured to have an intervertebral component coupled thereto, thereby affixing the intervertebral component to the vertebrae. More particularly, the Buttner-Janz reference teaches a prosthesis core positioned between two articulated surfaces of two plates. As such, the prosthesis core of the Buttner-Janz device is not affixed to the vertebrae. In contrast, the Steffee reference fails to teach or suggest an elastomer core of the Steffee device adhered to the implanted upper and lower flat rigid plates. Rather, the elastomer core is adhered to the upper and lower flat rigid plates prior to implantation, and fails to teach or suggest an elastomer core attachable to implanted rigid plates.

The Applicants respectfully submit that the Examiner has failed to provide a suggestion or motivation to modify the reference or to combine the reference teachings as required by see MPEP §2143.03. Furthermore, when read in combination, the Applicants respectfully submit that, when read in combination, the Buttner-Janz and Steffe references fail to teach or suggest all the claim limitations. (see MPEP §2143.03). More specifically, the Applicants submit that the cited references fail to teach or suggest a first and second anchor plate each being individually couplable to adjacent vertebrae, the first and second anchor plates configured to have an intervertebral component coupled thereto, thereby affixing the intervertebral component to the vertebrae.

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For at least the reasons stated above, it is respectfully submitted that independent claims 41, 43-51, 55-62, 64, and 65 are not anticipated by the Buttner-Janz and Steffee references.

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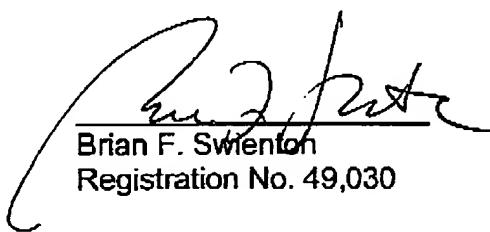
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CONCLUSION

In view of the foregoing, it is submitted that all pending claims are in condition for immediate allowance, and such action is respectfully requested. However, if for any reason direct communication with Applicant's attorney would serve to advance prosecution of this case to finality, the Examiner is cordially urged to call the undersigned attorney at the below listed telephone number.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-1329.

Respectfully submitted,



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July 25, 2003

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